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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1937

No. 760

ARKANSAS FUEL OIL COMPANY,
Appellant,

vs.

STATE OF LOUISIANA EX REL. HYMAN MUSLOW.

APPEAL FROM THE SUPREME COURT OF THE STATE OF LOUISIANA.

STATEMENT AS TO JURISDICTION.

H. C. WALKER, JR.,
ROBERT ROBERTS, JR.,
Counsel for Appellant.

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COURT OF APPEAL, SECOND CIRCUIT, STATE OF LOUISIANA.

No. 5467

STATE OF LOUISIANA EX REL. HYMAN MUSLOW,
Plaintiff and Appellee,

versus

ARKANSAS FUEL OIL COMPANY, SUBSTITUTED FOR LOUISIANA OIL REFINING CORPORATION,
Defendant and Appellant.

STATEMENT OF BASIS ON WHICH APPELLANT CONTENDS THE SUPREME COURT OF THE UNITED STATES HAS JURISDICTION TO REVIEW JUDGMENT ON AN APPEAL, AS REQUIRED BY SUPREME COURT RULE 12.

Pursuant to Supreme Court Rule 12, Paragraph 1, Arkansas Fuel Oil Company, which has filed herein petition for appeal to the Supreme Court of the United States, files this its statement showing the basis on which said appellant contends that the Supreme Court of the United States has appellate jurisdiction to review on appeal the judgment herein entered by the Court of Appeal, Second Circuit, State of Louisiana, as follows:

1.

The statute believed to sustain appellate jurisdiction of the Supreme Court of the United States is Paragraph (a),

Section 344, of Title 28 of the United States Code, which provides that "a final judgment or decree in any suit in the highest court of a State in which a decision in the suit could be had * * * where is drawn in question the validity of a statute of any state, on the ground of it being repugnant to the constitution treaties or laws of the United States, and the decision is in favor of its validity, may be reviewed by the Supreme Court upon a writ of error". The demand of the plaintiff in this suit being for less than $2,000.00, the Court of Appeal, Second Circuit, State of Louisiana, is the highest court of the State of Louisiana in which a decision in the suit could be had, the Supreme Court of Louisiana having declined to grant a writ of certiorari or review; see Constitution of Louisiana of 1921, Article 7, Section 10, and Article 7, Section 11; also *American Railway Express Company* v. *Levee*, 263 U. S. 19 (68 L. Ed. 140, 44 Sup. Ct. Rep. 11). Other cases believed to sustain the jurisdiction of the Supreme Court of the United States are, *International Steel & Iron Company* v. *National Surety Company*, 297 U. S. 657 (80 L. Ed. 961, 56 Sup. Ct. Rep. 619); *Grayson* v. *Harris*, 267 U. S. 352, 358 (69 L. Ed. 652, 655, 45 Sup. Ct. Rep. 317).

2.

The statute of the State of Louisiana, the validity of which is involved in this case, is Act No. 64 of 1934 (Acts, State of Louisiana Regular Session of 1934, Page 281, Dart's Louisiana Statutes, Supplement, Secs. 4822.1-4822.4), the title and body of the Act being quoted as follows:

"AN ACT

To foster the development of the natural resources of Louisiana by making it unlawful to withhold payment of any sum due lessor, royalty owner, lessee or producer under an oil, gas and mineral lease where the lessee or

producer has developed real property under a lease from the last record owner of such property, or of the mineral rights in and to said property have been alienated as of the date of such lease and under whom said lessee or producer claims, holding under an instrument sufficient in terms to transfer title to such property or said mineral rights; to authorize the purchaser of oil, gas or other minerals produced from such property to pay the price therefor to any party in interest under said mineral lease unless and until a suit testing the title to such property or said mineral rights is filed in the district court of the parish wherein said property is situated, with due notification of such filing given to such purchaser in interest, and releasing such purchaser from all responsibility in connection with all payments so made; to declare such producer, as concerns such purchaser against all other parties, conclusively presumed to be the true and lawful owner of all oil, gas or other minerals produced on said property; to provide that said purchaser shall not be entitled to the benefits of this Act unless recorded notice of said purchase first appears in the conveyance records of the parish where the land producing the purchased products is located; to limit the effects of this Act with respect to such oil, gas or other minerals purchased prior to its effective date; to provide a remedy to compel payment as aforesaid, or under any division order; and to repeal all laws, or parts of laws, in conflict with the provisions of this Act.

SECTION 1. Be it enacted by the Legislature of Louisiana, That it shall be unlawful for any person, firm or corporation, or the agent, employee or officer of any such persons, firm or corporation, when

1. such person, firm or corporation has leased any real property, or has acquired the mineral rights therein by lease or otherwise, from the last record owner thereof, as of the date of such lease and under whom said lessee or producer claims, holding under any instrument sufficient in terms to transfer title to such

property or said mineral rights, for the purpose of developing the same for oil, gas or other minerals; or

2. is holding any such lease under any assignment thereof; or

3. is producing for his or its account, or is producing and selling to others, any such oil, gas or other minerals under such lease or under any assignment thereof; or

4. has purchased from any such lessor, or any person holding under such lessor, or from the lessee or any person holding under such lessee, any oil, gas or other minerals produced from said leased property,

to withhold payment from the lessor or lessee, or any person holding from either or both of them, of any rentals, royalties or other sums whatever, including the purchase price of any such oil, gas or other minerals, due by virtue of such lease to any such lessor or lessee or person holding from either or both of them.

SECTION 2. That any person, firm or corporation that has actually drilled or opened on any land in this State, under a mineral lease granted by the last record owner, as aforesaid, of such land or of the minerals therein or thereunder if the mineral rights in and to said land have been alienated, who holds under an instrument sufficient in terms to transfer the title to such real property, any well or mine producing oil, gas or other minerals shall be presumed to be holding under lease from the true owner of such land or mineral rights and the lessor, royalty owner, lessee or producer, or persons holding from them, shall be entitled to all oil, gas or other minerals so produced, or to the revenues or proceeds derived therefrom, unless and until a suit testing the title of the land or mineral rights embraced in said lease is filed in the district court of the parish wherein is located said real property. A duly recorded mineral lease from such last record owner shall be full and sufficient authority for any purchaser of oil, gas or other minerals produced by the well or mine aforesaid to make payment of the price of said products to any party

in interest under said mineral lease, in the absence of the aforementioned suit to test title or of receipt, by such purchaser, of due notification by registered mail of its filing, and any payment so made shall fully protect the purchaser making the same; and so far as said purchaser is concerned as against all other parties, the producer of such oil, gas or other minerals shall be conclusively presumed to be the true and lawful owner thereof; provided, however, that this protection and presumption, respectively, shall both cease immediately upon the filing, in the district court of the parish wherein said leased land is located, of the aforementioned suit to test title and the receipt by said purchaser of due notification of the filing thereof, which receipt shall be made to appear by the usual postal registry receipt card; and provided, further, that such purchaser shall, however, not be entitled to any of the benefits of this Act unless there shall have been first recorded in the conveyance records of the parish wherein such land is located, due notice of the fact that the oil, gas, or other minerals produced thereon has been and will be bought by said purchaser.

SECTION 3. That notwithstanding the foregoing provisions, the purchaser, as respects any oil, gas or other minerals purchased prior to the date upon which this Act goes into effect, shall withhold payment of the purchase price until the lapse of sixty days from said effective date, or shall not be entitled to the protection said Act affords.

SECTION 4. That a writ of mandamus to compel payment of whatever may be due to any party in interest under the circumstances hereinabove set out, or under any division order, may be issued by any court of competent jurisdiction against any person, firm or corporation liable for the payment claimed; and the proceedings shall be tried by preference.

SECTION 5. That all laws or parts of laws in conflict with the provisions hereof be and the same are hereby repealed."

This statute was amended by Act 24 of the First Extra Session of 1935 (Acts, State of Louisiana. Extra Sessions of 1934 and 1935, page 517; Acts passed by the Legislature of the State of Louisiana at Extraordinary Session 1935, page 87, Dart's Louisiana Statutes, Supplement, Sec. 4822.5), so as to add to the title of such Act a clause as follows:

> • • • "and providing that this act shall not apply to oil, gas and other minerals produced from lands belonging to the State of Louisiana."

and by adding another section to the Act, numbered Section 6, as follows:

> "SECTION 6. That this Act shall not apply to oil, gas and other minerals produced from lands belonging to the State of Louisiana."

3.

The judgment of the Court of Appeal, Second Circuit, State of Louisiana, appealed from was entered in that court on the 1st day of June, 1937, and appears in the decretal part of the court's opinion in the case (Court of Appeal Transcript, page 102); application for rehearing was denied June 30, 1937 (Court of Appeal Transcript, page 102A), and writ of certiorari or review was denied by the Supreme Court of the State of Louisiana on November 2, 1937 (Court of Appeal Transcript, page 105). Appearers petition for appeal, with which this statement is presented, is dated and presented on the fifth day of January, 1938.

4.

In this case, petitioner's predecessor, Louisiana Oil Refining Corporation (which has been succeeded by appellant, Arkansas Fuel Oil Company, under a reorganization decree under Section 77B of the Bankruptcy Act) was made de-

fendant, the basis of the action being to recover the value of certain crude oil admittedly produced by plaintiff, Muslow, and delivered to Louisiana Oil Refining Corporation as a pipeline purchaser, the land from which the oil was produced being situated in Caddo Parish, Louisiana.

The petition in the suit was framed so as to bring its allegations within the provisions of Act 64 of 1934, above quoted, which requires persons engaged in the business of operating pipe lines and buying oil, to pay to the producer of such oil the value thereof regardless of questions of title. As permitted by the act, the proceeding was initiated by an alternative writ of mandamus; on the return day of the writ the defendant filed an exception of no cause or right of action and an answer to the plaintiff's petition containing the following allegation (Answer, Paragraph 10, Court of Appeal Transcript, page 17):

> "A. C. Best and Sherman G. Spurr, from whom relator claims to have a mineral lease covering the lands from which the oil was produced, were not the owners thereof, for the reasons set forth in respondent's answer to Paragraph 3, and more fully set forth in detail in the opinion of its attorney, made part of this answer as Exhibit 1; and for the same reasons relator, Muslow, has never had a valid mineral lease upon said lands, and does not own and never owned the oil received by defendant and may not recover the value thereof."

At the same time a plea of unconstitutionality was filed by defendant (Court of Appeal Transcript, page 12) the said plea containing the following language:

> "That the Act No. 64 of 1934 of Louisiana relied upon by relator in this cause is null, void and of no force or effect for the following reasons: to-wit:
>
> "The said statute if enforced in this cause in the manner relied upon by relator would require respon-

> dent to pay to relator the value of property which did not belong and never has belonged to plaintiff, thereby leaving respondent responsible and liable to the true owner of said property for the value thereof and in that manner depriving respondent of its property without due process of law and denying to it the equal protection of the laws, contrary to the provisions and requirements of the Constitutions of the United States and of the State of Louisiana."

The same contention was made by defendant in its answer (Paragraph 9, Court of Appeal Transcript, page 16), as follows:

> "The allegations of Paragraph 9 of relators petition are denied. In connection with the reference made to the Act 64 of 1934 of the Legislature of Louisiana, in Paragraph 9 of plaintiff's petition, defendant shows that the said Act is invalid, null and void, and in violation of the Constitution, of the State of Louisiana and of the United States, for the reasons set forth in the plea of unconstitutionality this date filed."

Plaintiff in bringing his suit had relied, to state a cause of action, upon the provisions of said act, as will appear from Paragraph 9 of his petition (Court of Appeal Transcript, page 5), as follows:

> "Petitioner further avers that under the provisions of Act 64 of 1934, he made due and proper demand of the defendant company for payment of said oil but that the said defendant company refused to pay for same and that your petitioner is entitled to writ of mandamus as provided in said act, compelling defendant to make payment for the oil."

Upon the trial of the case, defendant offered to make proof that plaintiff did not own the land from which the oil was produced, as will appear from the following quota-

tion from the transcript of the evidence taken upon the trial (Court of Appeal Transcript, page 36):

> "*Mr. Roberts:* Defendant offers in evidence deed from Frederick S. Oliver by T. R. Hughes, Tax Collector, to Fred L. Lake, dated July 14th, 1919, recorded in the records of Caddo Parish, Louisiana, Conveyance Book 123, Page 256, with leave to substitute certified copy in lieu of the original prior to the submission of the case to the Court.
>
> *Mr. Files:* That is objected to for the same reasons as previously urged. There is no question of estate involved in that, if the Court please.
>
> *By the Court:* Objection sustained.
>
> "To which ruling of the Court counsel on behalf of defendant excepts and asks that this note stand in lieu of formal bill of exceptions."

The trial court gave judgment for plaintiff (Court of Appeal Transcript, page 86) and in a written opinion (Court of Appeal Transcript, pages 65 to 75, inc.) overruled the plea of unconstitutionality, using the following language (Court of Appeal Transcript, page 69):

> "In the absence of anything showing that the Act is plainly unconstitutional, we are constrained to hold the contrary under the well established rule that it is presumed to be so."

Under the judicial system of the State of Louisiana, defendant's appeal from the judgment of the District Court presented for review in the Appellate Court every question passed upon and every ruling made by the trial court (see *Hawkins* v. *Costley*, 169 La. 229, 124 So. 837; *State ex Rel. Schlater* v. *Judge*, 42 La. Ann. 809, 5 So. 407). The Court of Appeal considered that the question of the constitutional validity of the statute controlled the decision of the case,

as appears from the opening sentence of its opinion, which is as follows (Court of Appeal Transcript, page 91):

> "The constitutional integrity of Act 64 of 1934 is squarely put at issue in this case. The Act was upheld by the lower court and defendant has appealed."

The Court of Appeal, after having considered the matter, stated in its opinion (Court of Appeal Transcript, page 97):

> "We can perceive of no good reason why the Legislature is not vested with ample power to enact such a law for the promotion of just and fair dealings between its citizens. No vested right of the owner is destroyed nor is he denied thereby the equal protection of the law. He still has a recourse against the person who acquired possession of and sold his property."

The judgment of the Court of Appeal is contained in the concluding paragraph of its opinion (Court of Appeal Transcript, page 102), as follows:

> "We are of the opinion that the lower court's judgment is correct. It is hereby affirmed with costs."

The constitutional question involved is one of substance. The appellant here is in a position to raise the question since if the purported protection given by the statute is illusory, the true owner can make it pay again for the oil. As to the right of defendant in such case to depend upon the constitutional invalidity of analogous legislation, see *Provident Institution for Savings* v. *Malone,* 221 U. S. 660 (31 Sup. Ct. Rep. 661, 35 L. Ed. 899). So far as can be determined, no similar statutes exist in other states nor have any cases been found passing upon the constitutional validity of similar legislation. The question involved may be assimilated to that involved in the determination of the constitutional validity of Torrens title registration acts, and of statutes for the reestablishment of titles where records

have been destroyed. Such statutes have been sustained when they provide for actual notice to known claimants of the title, for notice by publication to unknown or contingent claimants, and for a hearing on the matter of the applicant's right; but which are held to be invalid where these safeguards are omitted. See *American Land Company* v. *Zeiss*, 219 U. S. 47 (31 Sup. Ct. Rep. 200, 55 L. Ed. 82). The statute of Louisiana here involved makes no provision for notice to the true owner or for any opportunity for hearing.

5.

A copy of the opinion of the Court of Appeal, Second Circuit, State of Louisiana, in the present case is appended.

Dated, Shreveport, Louisiana, January 5th, 1938.

Respectfully submitted,

H. C. WALKER, JR.,
ROBERT ROBERTS, JR.,
Counsel for Appellant.

EXHIBIT "A".

COURT OF APPEAL, SECOND CIRCUIT, STATE OF LOUISIANA.

No. 5467.

STATE *ex rel.* HYMAN MUSLOW, *Plaintiff-Appellee,*

v.

LOUISIANA OIL REFINING CORPORATION, ARKANSAS FUEL OIL COMPANY (*Substituted Defendants*), *Defendant-Appellant.*

Appeal from the First Judicial District Court in and for the Parish of Caddo.

Hon. T. F. Bell, Judge.

John B. Files, Attorney for Appellee.

Blanchard, Goldstein, Walker & O'Quin, Robert Roberts, Jr., Attorneys for Appellant.

Hon. Harmon C. Drew, Hon. R. M. Taliaferro, Hon. Joe B. Hamiter, Judges.

By TALIAFERRO, *J.:*

The constitutional integrity of Act 64 of 1934 is squarely put at issue in this case. The act was upheld by the lower court and defendant has appealed.

Arthur C. Best and Sherman G. Spurr, on April 28, 1927, purchased from the Ackerman Oil Company by warranty deed several tracts of land in Caddo Parish, including that of 37.50 acres described in plaintiff's petition. This deed expresses a price of "one dollar and other good and valuable consideration" received by the grantor. It is executed on behalf of the corporation by Paul Mlodzik, President, and by Jerome C. Dretzka, Secretary. It is verified by the joint affidavit of these two officers who therein declare that they acted "by its (the Company's) authority". Several non-producing oil wells were on the tract on February 17, 1933,

and the casing therefrom, owned by the plaintiff, was sold by Best and Spurr. However, on that date plaintiff procured their consent in writing to temporarily leave the casing in one of the wells to the end that he might make further tests to ascertain if profitable production could be had.

An informal written contract of lease to evidence the agreement was signed by them and placed on record. It is stipulated therein that plaintiff should receive seven-eighths of production, if any, and Best and Spurr one-eighth thereof. The effort was in a measure successful. Oil was produced. The output was sold to the defendant and piped by plaintiff into its carrier lines. The first run was made in September, 1933, and the last in August, 1934. The net amount due therefor and for which plaintiff sues is $445.55. Payment of this amount was refused on demand. Judgment was rendered therefor. As is authorized by the 1934 act, an alternative writ of mandamus was sued out.

Defendant excepted to the petition on the ground that it did not disclose a cause or right of action, and by formal plea attacked the 1934 act as being unconstitutional, void and of no effect, in the following language:

> "The said statute, if enforced in this cause, in the manner relied upon by relator, would require respondent to pay to relator the value of property which did not belong and never has belonged to plaintiff, thereby leaving respondent responsible and liable to the true owner of said property for the value thereof, and in that manner depriving respondent of its property without due process of law, and denying to it the equal protection of the laws contrary to the provisions and requirements of the Constitutions of the United States and of the State of Louisiana."

The exception and plea were tried with the merits. Defendant denies that plaintiff has a valid lease of said land and denies that he ever has been the owner of the crude oil produced therefrom. It denies also that the deed to Best and Spurr is translative of property for two reasons, viz; (1) that no serious consideration is therein expressed; and (2) that the officers of the Ackerman Oil Company who

signed said deed are not alleged either in the deed or the petition to have been authorized by the corporation to execute the deed. It also avers that in keeping with the uniform rule and practice of oil companies, its own counsel examined the abstract of title to said 37.50-acre tract and made criticism thereof and recommended that certain information be procured and curative work done in order to put said title in condition to be favorably passed, all of which were made known to plaintiff; and that none of these suggestions and recommendations were complied with and for this reason the price of the oil was withheld from plaintiff.

Subsequent to filing this suit, the Louisiana Oil Refining Company, availing itself of the benefits of Section 77-B of the United States Bankruptcy Act (U. S. Code, Title 11, § 207), for the purpose of reorganization, etc., surrendered all its property, assets and affairs to the United States District Court for the Western District of Louisiana and thereafter all of such property and assets were purchased and its liabilities assumed by the Arkansas Fuel Oil Company. This purchaser was substituted as defendant and the judgment herein rendered is against it.

Section 1 of Act 64 of 1934 declares, inter alia, that it shall be unlawful for any person, firm or corporation or officer thereof, when such person, firm or corporation has purchased oil, gas or other minerals from the lessee in a mineral lease *holding under any instrument sufficient in terms to transfer title to the leased property or the mineral rights described therein,* to withhold payment of the price of such purchase. Section 2 of the act, so far as is pertinent to the present discussion, reads:

> "That any person, firm or corporation that has actually drilled or opened on any land in this State, *under a mineral lease granted by the last record owner,* as aforesaid, of such land or of the minerals therein or thereunder if the mineral rights in and to said land have been alienated, who holds under an instrument sufficient in terms to transfer the title to such real property, any well or mine producing oil, gas or other minerals shall be presumed to be holding under lease from the true owner of such land or mineral rights and the lessor,

royalty owner, lessee or producer, or persons holding from them, shall be entitled to all oil, gas or other minerals so produced, or to the revenues or proceeds derived therefrom, unless and until a suit testing the title of the land or mineral rights embraced in said lease is filed in the district court of the parish wherein is located said real property. A duly recorded mineral lease *from such last record owner* shall be full and sufficient authority for any purchaser of oil, gas or other minerals produced by the well or mine aforesaid to make payment of the price of said products to any party in interest under said mineral lease, in the absence of the aforementioned suit to test title or of receipt, by such purchaser, of due notification by registered mail of its filing, and any payment so made shall fully protect the purchaser making the same; and so far as said purchaser is concerned as against all other parties, the producer of such oil, gas or other minerals shall be conclusively presumed to be the true and lawful owner thereof."

Section 3 of this act is as follows:

"That notwithstanding the foregoing provisions, the purchaser, as respects any oil, gas or other minerals purchased prior to the date upon which this Act goes into effect, shall withhold payment of the purchase price until the lapse of sixty days from said effective date, or shall not be entitled to the protection said Act affords."

We had occasion to study and analyze this act in *State ex rel. Boykin* v. *Hope Producing Company,* 167 So. 506, and therein said:

"We experience little difficulty in determining the legislative intent in adopting this act. It supplied a long-felt need, and in its operative effect will serve to prevent imposition upon and unjust discrimination against those whom it was intended to protect. The act establishes a rule of conduct for the protection of lessors, and their assignees, under oil and gas leases,

and also a rule of security and safety for lessees and those holding under or purchasing from them. The right to resort to mandamus to compel payment of rentals, royalties, or other sums due under the specific terms of the lease, is limited to demands which embrace an amount or amounts definitely fixed in the contract.

* * * * * * *

The act was designed also to protect those persons whose rights arose from or are based upon contracts with the last record owner of the lands covered thereby, and to those who deal with or acquire from such persons. The last record owner is given the status of true owner, as relates to all of said persons, and this status continues as to them until disturbed by filing of suit by an adverse claimant of the leased land or some real right concerning it. Under the act, royalty payments, definitely fixed in the lease, may not be legally withheld from those persons entitled to receive same, because of any defect in the title of the leased property or because of any threat or purpose on the part of third persons to involve the title or lease itself in litigation. Actual filing of suit by such third persons is necessary to stop the operative effect of the terms of the act."

Conditions precedent to a proper application of the protective provisions of this act are these:

(a) That the lessee or other person from whom oil is purchased must trace his right to a lease or other contract with the last record owner holding title to the land or minerals sufficient in terms to transfer the res. In other words, a transfer or deed translative of property; and

(b) That said mineral lease or other contract from such last record owner be duly registered in the parish wherein is located the land thereby affected.

Concurrence of these two conditions warrants and protects the purchaser in paying the price to the one from whom the oil has been purchased; and, under the express declarations of the act, no recourse may thereafter be had

by any third person or adverse claimant against such buyer. A title to be translative of property need not be executed by the true owner. Civil Code, Article 3485. It is only necessary to have such character that it be "a title which shall be legal and sufficient to transfer the property" if executed by the true owner, and sufficient to form the basis of the prescription of ten years. Civil Code, Articles 3479, 3484. It must be valid in point of form. The title deed to Best and Spurr meets all these requirements; but, it is argued, the absence of any written authority from the Ackerman Oil Company to its executive officers to execute the deed qualifies the act of sale to such extent that it is stripped of an indispensable attribute to its quality of being translative or property. It is not intimated that these officers were not clothed with authority to act for the company. Their good faith is not challenged. Over eight years had elapsed when this suit was filed and the company, the only person to complain, had not raised its voice in protest of its officers' action. Such an act of sale is presumed to have been executed by authority and, for the purposes of said act, is translative of property in point of form.

It has been frequently held that where one assumes the quality of agent and as such sells real estate, the deed executed by him, if otherwise valid, will serve as the basis of the prescription of ten years.

Bowers v. *Laughton et al.,* 156 La. 188, 195, 100 So. 301.

A long list of decisions supporting this principle is cited, among which is that of,—

Greening v. *Natalie Oil Company,* 152 La. 467, 93 So. 682,

wherein the court on rehearing quoted with approval the following statement in *Bedford* v. *Urquhart,* 8 La. 241:

> "A sale of immovable property, followed by tradition by a person styling himself the attorney in fact of the owner, but whose power of attorney is not produced, is only defective for want of the evidence of his authority, and not a nullity of form resulting from his legal incapacity."

We do not think there is merit in the contention that the deed is not translative of property because of the faulty expression of its consideration. It is presumed in a commutative contract that it is executed for a valid and adequate consideration, unless lack of such is negatived on its face.

Read v. *Hewitt,* 120 La. 288, 43 So. 143.

"An agreement is none the less valid, though the cause be not expressed."

Civil Code, Article 1894.

The true cause or consideration of a contract may be shown by oral testimony, even though the expressed consideration be thereby contradicted. This rule is fixed in our jurisprudence by scores of decisions.

Moore v. *Pitre,* 149 La. 910, 915, 90 So. 252.

We shall first discuss the constitutional question presented as though the oil in question were all delivered to defendant after the effective date of the 1934 act.

It is not disputed that as a rule the true owner of the soil has a right of action against the purchaser of oil from one who first reduced it to possession. The right of the true owner to hold the purchaser or converter of the oil for its market value is a legal one, created and continued by lawful authority and, of course, may be modified, abridged or entirely abolished by the same or a co-equal power. Fugitive minerals, such as petroleum, belong to no one until reduced to possession. A lease to drill and explore therefor confers no real right. It has the status of a personal right.

Gulf Refining Company of Louisiana v. *Glassell, et al.,* 186 La. 190, 171 So. 846.

When reduced to possession, oil becomes personal property and the sale thereof with incident rights may be regulated and controlled as to scope and effect as the legislature deems proper, within constitutional limitations. Act 64 of 1934 does not seek to relieve the producer of oil from liability to the true owner of the soil. It does have the purpose of con-

fining such true owner's recourse to the producer. Instead of having recourse against the producer and his purchaser, the true owner's recourse is restricted to the producer alone. We can perceive of no good reason why the Legislature is not vested with ample power to enact such a law for the promotion of just and fair dealings between its citizens. No vested right of the owner is destroyed, nor is he denied thereby the equal protection of the law. He still has recourse against the person who acquired possession of and sold his property.

A promissory note prescribes in five years from its maturity. It may not be collected if the maker resists its enforcement because barred by the statute of limitations. He still owes the note, but the law has taken from the holder the right to enforce collection judicially. It could not be successfully contended that such a law has deprived the holder of his property without due process of law. The same may be said of all prescriptions which bar actions unless instituted within a definite period.

The owner of stolen property may recover its value from one who in good faith purchased it from the thief and thereafter destroyed, consumed or disposed of it. We see no valid reason why the Legislature should not be within its proper power to enact a law that would protect the innocent purchaser from having to pay the owner the value of the stolen property and confine the recourse of such owner against the thief.

Real and personal property may be acquired by prescription as against the true owner, yet no one contends that laws recognizing this method of acquisition deprive the owner of his property without due process of law or deny to him the equal protection of the law.

The right to inherit property, save as to forced heirs (Constitution, Section 16 of Article IV), depends upon the legislative will.

Hughes v. *Murdock et al.*, 45 La. Ann. 935, 13 So. 182.

An act of the Legislature abridging, modifying or denying the right of inherison by heirs, other than forced ones, could not be successfully assailed on the ground that it deprived

such heirs of property (an expectancy) without due process of law. Until such a right, as is the case with most rights, devolves upon the beneficiary, the power of the Legislature relative thereto is practically supreme.

The privilege of suing and of judicially compelling a debtor to repay what he is due to a complainant, even by the forced sale of his property, is conferred only by law. Without legal sanction such could not be done.

Article 1 of the Code of Practice defines an action to be,—"the right given to every person to claim judicially what is due or belongs to him". A personal action is defined by Article 3 of the Code of Practice to be,—

> "* * * that by which a person proceeds against one who is personally bound towards him, *either by a contract or by virtue of the law*, in order to compel him to pay what he owes to him or to perform what he had promised."

Applying this rule to the case at bar, it is clearly seen that defendant's fears of having to pay twice for the oil purchased from plaintiff are wholly groundless. No third person may claim such price by virtue of any contract with defendant, and the right of such person to sue defendant for the oil's value has been withdrawn by legislative enactment.

Act 64 of 1934 became effective on August 1, 1934. Nearly all of the oil involved herein was delivered to defendant prior to that date. It is contended by defendant that for the value of oil delivered prior to the going into effect of the act, a vested right and cause of action arose in favor of the true owner of such oil, if plaintiff were not such, and that such right and cause of action may not be divested or destroyed by legislative fiat. Unless the act by its own terms is saved from the force of this attack, defendant's position is well taken. A right of action to force indemnification for wrongs done to person or property is property within the meaning of the Constitution. The Legislature is destitute of power to annul or destroy it.

Angle v. *Railway Company*, 151 U. S. 1, 38 L. Ed. 55.

We think the act itself may be construed to adequately take care of the issue tendered by this contention. Section 3 provides that as to oil purchased prior to the act's effective date, the purchaser "shall withhold payment of the purchase price until the lapse of sixty days from said effective date". If payment is made before the expiration of said effective date, then the purchaser is not protected by the act. While the act does not so declare, yet it is obvious that this sixty-day limitation was incorporated therein equally for the benefit of adverse claimants of the oil so sold and its purchaser. Claimants were allowed that period in which to assert their rights to the price against the purchaser and, in default of so doing within such time, they would thereafter have no standing in court to do so. This character of limitation upon a claimant's right to sue has the sanction of law and has been uniformly recognized by the courts as a competent exercise of legislative power. The only limitation thereon is as to the reasonableness of the time allowed to the adverse claimant to invoke judicial aid in vindication of his asserted rights. Defendant does not here contend that the limitation in the 1934 act is unreasonably brief. Anent this principle, the Supreme Court in *Atchafalaya Land Company* v. *F. B. Williams Cypress Company*, 146 La. 1047, 84 So. 351, as reflected from the syllabus, held that,—

> "The test of validity of a statute of limitations under the doctrine that a statute cannot, under the guise of merely changing the remedy for asserting a right or for enforcing an obligation, immediately take away the right or materially impair the means of enforcing the obligation, is whether it allows a reasonable time for the assertion of the right or the enforcement of the obligation; the Legislature being primarily the judge of the reasonableness of the time allowed."

This case was carried to the United States Supreme Court and the judgment there affirmed. (258 U. S. 190, 66 L. Ed. 559).

This holding of the court is abundantly supported by text books on constitutional law. Black and Watson are

quoted from in the opinion. They say that the question of the reasonableness of the limitation is one that addresses itself to the judgment of the Legislature, and that the courts "will not determine it unless the error is a palpable one". In the present case, nearly twelve months elapsed after the effective date of the act before suit was filed. No third person to that time claimed the money in controversy and we may safely assume no such suit has been filed to this time. Touching this point, the court in the *Atchafalaya Land Company* case, said:

> "If the time that had already run has anything to do with the question, why should we say that six years in which to sue on a cause of action that had already run 22 years was not a reasonable time?"

(See also *State ex rel. Richardson* v. *Recorder of Mortgages,* 12 La. App. 62.)

Plaintiff has taken the position that since defendant recognized his ownership of the oil and agreed to pay him for it originally, without qualification, it is now estopped to challenge such ownership and inequitably held both the thing and its price, especially so when no adverse claim has been made to the oil in whole or part. There may be merit in the plea of estoppel, but it is unnecessary to definitely pass on the issue thereby raised in view of the decision reached by us on the more important questions submitted for adjudication.

Plaintiff sued for attorney's fees for services rendered in the case. These were disallowed by the lower court. We think this action correct. No law is known to us that warrants recovery of such a fee in a case of this character. Counsel fee was disallowed by the lower court in *Sam P. D. Coyle* v. *North Central Texas Oil Company, Incorporated,* and the judgment therein rendered as a whole was affirmed by the Supreme Court. The facts of that case are analogous with the present one. The case is not yet reported.

We are of the opinion that the lower court's judgment is correct. It is hereby affirmed, with costs.

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